

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Jeff McWherter,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 12-77-0053
Parcel No. 241/00600-002-000

On March 1, 2013, the above captioned appeal came on for consideration before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Jeff McWherter was self-represented and requested a written consideration. Assistant County Attorneys Ralph Marasco, Jr. and David Hibbard represented the Polk County Board of Review. The Appeal Board having reviewed the record and being fully advised finds:

Findings of Fact

Jeff McWherter is the owner of a residential, single-family property located at 5140 NW 66th Avenue in Johnston, Iowa. The property is a split-level home built in 1989 with 1526 square feet of total living area. It has a 448 square-foot basement, of which 132 square feet is finished. The home also has a 84 square-foot deck and a 440 square-foot attached garage. The home is of average quality (4+10) grade and is in normal condition. The site is 0.232 acres.

McWherter protested to the Board of Review regarding the 2012 assessment of \$165,500, which was allocated as follows: \$33,900 in land value and \$131,600 in improvement value. The January 1, 2012, assessment did not change from the prior year. His claim was based on the following grounds: 1) that the property was assessed for more than the value authorized by law under section

441.37(1)(a)(2); and 2) there was an error in the assessment under section 441.37(1)(a)(4), essentially asserting the property is over-assessed. He asserted the subject property's total correct value was \$137,565, representing \$28,178 in land value and \$109,387 in improvement value. In spite of the recommendation to deny the protest in the Board of Review's Appraiser Analysis, the Board of Review granted the protest, in part, reducing the assessment to \$159,500.

McWherter then appealed to this Board re-asserting his claim. He contends the correct value is \$137,565, representing \$28,178 in land value and \$109,387 in improvement value.

Because the Board of Review changed the value of McWherter's property citing a change in value since the last reassessment, we find the Board of Review acquiesced to the ground that there has been a change in value since the last assessment under sections 441.35(2) and 441.37(1)(b). *See Security Mut. Ins. Ass'n v. Bd. of Review of Ft. Dodge*, 467 N.W.2d 301, 305 (Iowa Ct. App. 1991); *White v. Bd. of Review of Polk County*, 244 N.W.2d 765, 769 (Iowa 1976). Therefore, the only ground we will consider on appeal is that there has been a change in value since the last reassessment, as it is the only ground appropriately pled in an "interim year" when the assessor has not change the assessment.

McWherter's evidence is a listing of ten comparable homes that sold between April 2011 and February 2012. The sale prices ranged from \$125,500 to \$163,000, or \$84 per-square-foot to \$158 per-square-foot. The record indicates the sale of Comparable 5 (5300 NW 66th Place) was a contract sale and, as such, we do not consider it in this appeal. § 441.21 (stating that "[i]n arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account . . . including but not limited to . . . contract sales").

The remaining sales are primarily split-level or split-foyer homes located in the same area. However, they vary in size, age, and other amenities, and McWherter did not make adjustments to account for these differences.

We also note differences between McWherter's evidence and the subject's property record card. McWherter compares his property's assessment to the sale price per-square-foot of the comparables based on what he calls "living space." While McWherter's evidence indicates the subject's "living space" is 1,064 square feet, the property record card indicates the subject has 1,526 square feet of "Living Area." We are unsure how McWherter determined the "living space" he used to determine his assessed value per-square-foot of \$156. The subject's assessed value per-square-foot based upon the living area indicated on the property record card is \$104.52. This is well within the range of the sale prices per-square-foot of McWherter's comparables.

The Board of Review Appraiser Analysis compared five of the properties listed by McWherter.¹ It noted that Comparable 1 (4755 NW 65th Avenue) is most like the subject home, although its above grade square-footage is 500 square feet smaller. Comparable 2 (5650 NW 63rd Place) is a much older property, lesser quality home. Comparable 3 (5125 NW 62nd Avenue) is too old to compare and is not the same style as the subject property. Comparable 4 (6680 NW 54th Court) is also much older 300 square feet smaller than the subject. Finally, Comparable 5 is not a good comparison because it was a contract sale and is 542 square feet smaller than the subject property. We do not find these homes to be comparable and therefore give this evidence little consideration.

Ultimately, McWherter fails to prove the fair market value of the subject property as of January 1, 2011, and the fair market value of the subject as of January 1, 2012. Both values are necessary to establish a change in value since the last assessment.

¹ As previously noted, McWherter submitted a total of ten comparable properties which he believes indicate the property's correct value to be \$137,565. The Board of Review, however, only completed an analysis of five of McWherter's comparables.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

In a non-reassessment or "interim" year, when the property's assessment has not changed, a taxpayer may challenge its assessment on the basis that there has been a change in value from the immediately preceding assessment year. Iowa Code §§ 441.35(2), 441.37(1)(b) (2013); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). For a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the

beginning and final valuation. *Equitable Life Ins. Co.*, 252 N.W.2d at 450. The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

McWherter failed to provide sufficient evidence demonstrating the fair market value of his property as of January 1, 2011, and January 1, 2012. Both values are necessary to succeed in a claim that the property has suffered a downward change in value since the last assessment under sections 441.35(2) and 441.37(1)(b).

We, therefore, affirm the assessment of Jeff McWherter's property.

THE APPEAL BOARD ORDERS the assessment of Jeff McWherter's property located at 5140 NW 66th Avenue, Johnston, Iowa 50131 of \$159,500, as of January 1, 2012, set by the Polk County Board of Review, is affirmed.

Dated this 12th day of March 2013.

Stewart Iverson
Stewart Iverson, Presiding Officer

Jacqueline Rypma
Jacqueline Rypma, Board Member

Karen Oberman
Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>March 12, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>Jean Cooper</u>